



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA-R02-OAR-2012-0032, FRL-9714-5]

Approval and Promulgation of Implementation Plans and Operating Permits Program;  
Commonwealth of Puerto Rico; Administrative Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Puerto Rico Regulations for the Control of Atmospheric Pollution, submitted to EPA by the Puerto Rico Environmental Quality Board on July 13, 2011. This action approves revisions to Rules 102, 111, 115, 116 and Appendix A. EPA is also approving a revision to Rule 609 as part of Puerto Rico's Title V Operating Program.. Generally the revisions to the regulations involve administrative changes which improve the clarity of the rules contained in the Commonwealth's Implementation Plan and Operating Permits Program. They do not change the emission limitations nor add significant new requirements.

EFFECTIVE DATE: This rule will be effective on [Insert date 30 days from date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under the Federal Docket Management System (FDMS) which replaces the Regional Materials in EDOCKET (RME) docket system. The new FDMS is located at [www.regulations.gov](http://www.regulations.gov) and the docket ID for this action is EPA-R02-OAR-2012-0032. All documents in the docket are listed in the FDMS index. Publicly available docket materials are available either electronically in FDMS or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Air and Radiation Docket and Information Center, Environmental Protection Agency, Room 3334, 1301 Constitution Avenue, NW., Washington, DC; and the Puerto Rico Environmental Quality Board, Cruz A. Matos Environmental Agencies Building, 1375 Ponce de Leon Avenue, San Juan, Puerto Rico, 00926.

FOR FURTHER INFORMATION CONTACT:

Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3381.

*SUPPLEMENTARY INFORMATION:*

On July 13, 2011, the Puerto Rico Environmental Quality Board (PREQB) submitted to EPA a request for approval of revisions to the Puerto Rico Regulations for the Control of Atmospheric Pollution (PRRCAP). In the context of the Clean Air Act (CAA or Act), the Commonwealth of

Puerto Rico is regarded as a state. Generally the changes to the PRRCAP involve administrative changes which improve the clarity of the rules. They do not change the emission limitations nor add significant new requirements.

On March 22, 2012 (77 FR 16676), EPA published a direct final rule that approved the revisions to the Puerto Rico Regulations for the Control of Atmospheric Pollution that were submitted to EPA by PREQB on July 13, 2011. EPA also published a proposed rule on March 22, 2012 (77 FR 16795). In the direct final rule, EPA stated that if we received adverse comments by April 23, 2012, the rule would be withdrawn and not take effect. EPA received an adverse comment and withdrew the direct final rule on May 29, 2012 (77 FR 31499). Based upon the proposed action published on March 22, 2012 (77 FR 16795), EPA is addressing the comment received in this final action. EPA is not instituting a second comment period on this action.

## **I. Revisions to the PRRCAP**

Most of the revisions consist of clarification type changes such as public law or code cites or word changes. A summary of the various revisions is given below. EPA has determined that the revisions improve the effectiveness of the PRRCAP and will have no negative effect on maintaining the national ambient air quality standards.

### **A. General Provisions**

*Rule 102, “Definitions” and Appendix A, “Hazardous Air Pollutants – Section 112(b) of the Clean Air Act”*

PREQB revised two definitions in the revised Rule 102. They include the definition for “Volatile Organic Compounds (VOC)” and the definition for “Applicable Rule and Regulation.”

PREQB revised the VOC definition to make it consistent with EPA’s definition for VOC found in 40 CFR section 51.100(s). The revision to the “Applicable Rule and Regulation” definition includes a change to the citation of Puerto Rico’s Environmental Public Policy Act. It was previously referenced in the definition as Law No. 9 of June 18, 1970. That Law was replaced by Law No. 416 of September 22, 2004.

PREQB also revised Appendix A to the PRRCAP. PREQB revised Appendix A to make it consistent with EPA’s amended list of hazardous air pollutants in CAA section 112. Appendix A is referenced in the federally approved definition of Rule 102 – “Hazardous Air Pollutant” of the PRRCAP.

*Rule 111, “Applications, Hearings, Public Notice” and Rule 115, “Punishment”*

PREQB revised Rules 111 and 115 in order to change the citation to Puerto Rico’s Environmental Public Policy Act. It was previously referenced in Rules 111 and 115 as Law No. 9 of June 18, 1970. That Law was replaced by Law No. 416 of September 22, 2004.

*Rule 116, “Public Nuisance”*

PREQB revised Rule 116 in order to revise the citation of the applicable Puerto Rico code. Rule 116 previously referenced Article 329 of the Penal Code of Puerto Rico and this reference was

replaced with Article 277 of the Civil Prosecution Code of Puerto Rico.

None of the revisions to Rules 102, 111, 115, 116 or Appendix A of the PRRCAP involve changing the stringency of these provisions. EPA has thoroughly reviewed all of the revisions contained in these rules and has determined they meet EPA guidance and requirements; therefore, EPA is approving these revised rules. However, with regard to the revisions to the definition of VOC in Rule 102 and Appendix A, which are intended to achieve consistency with the CAA Section 112 list of chemicals, it is important to note that the CAA Section 112 list could potentially be revised by EPA and, for federal enforcement purposes, EPA will rely on the federally issued CAA Section 112 list.

#### B. Other Provisions

##### *Rule 609, “Permit Review”*

PREQB also submitted a revision to Rule 609(g), “Confidential information” of the PRRCAP on July 13, 2011. The revisions to Rule 609 include the citation for Puerto Rico’s Environmental Public Policy Act. It was previously referenced as Law No. 9 of June 18, 1970. That Law has subsequently been replaced by Law No. 416 of September 22, 2004. Rule 609 was never approved into the federally enforceable SIP for Puerto Rico since the provisions of Rule 609 are relevant to the Title V of the Act requirements. The federally approved SIP reflects only Title I of the Act requirements and not Title V. Therefore, EPA is not approving the revisions to Rule 609 into the federally enforceable Puerto Rico SIP. However, EPA is approving the revision to

Rule 609 as part of the federally approved Puerto Rico Title V operating permits program. Rule 609 and the Puerto Rico Title V program were previously approved by EPA on February 26, 1996 (61 FR 7073).

## **II. What Comments Did EPA Receive in Response to its Proposal?**

On March 22, 2012 (77 FR 16676), EPA proposed to approve the revisions to the PRRCAP, submitted to EPA by the Puerto Rico Environmental Quality Board on July 13, 2011.

In response to EPA's March 22, 2012 proposed rulemaking action, EPA received one comment from Aida T. Fuentes Rivera, MPH.

### **Comment:**

The commentor states that there are other volatile organic compounds that have the potential to volatilize and produce adverse health effects, but are neither subject to the PRRCAP Rule 102 definition for VOCs, nor included in the section 112(b) Hazardous Air Pollutant (HAP) list. The commentor suggests that Puerto Rico harmonize all of its rules to clarify the applicability of all sources of VOCs, not just those sources applicable to Rule 102, National Emission Standards from Hazardous Air Pollutants (NESHAPs) or New Source Performance Standards (NSPS) or other federal requirements.

**Response:**

EPA is approving a revision to the PRRCAP to include, among other things, the federal definition of “VOC” into Rule 102. This definition is consistent with the existing federal definition of VOC found in 40 CFR section 51.100(s). EPA is acting on a request by the PREQB to include such definition into its SIP. Incorporation of the definition into the Puerto Rico SIP does not impose any new requirements, i.e., emission rates, reporting or recordkeeping.

It is PREQB’s prerogative should they subsequently decide to revise their SIP approved regulations, i.e., Rules 102 and 206 (Rule 419 and Appendix B are not part of the federally approved Puerto Rico SIP), to include a discussion of those rules’ applicability to sources not otherwise affected by NESHAPs, NSPS or other federal requirements. However, that is not necessary for EPA approval of the definition of VOC into the SIP, nor is that part of PREQB’s request for which EPA is taking this action. EPA suggests the comment would be more appropriately directed towards PREQB during the public hearing process associated with any subsequent and relevant revisions to the PRRCAP. Also, it is important to note that approved implementation plans or SIPs pursuant to section 110 of the CAA are required to include provisions necessary to implement, maintain and enforce the criteria pollutants or national ambient air quality standards and not directly HAPs or air toxics.

**III. Conclusion**

The revisions to Rules 102, 111, 115, 116 and Appendix A of the PRRCAP, effective February 18, 2011, are generally administrative changes, which improve the clarity of the rules. They do

not change emission limitations nor add significant new requirements. EPA has thoroughly reviewed all of the revisions contained in these rules and has determined they meet EPA guidance and requirements. EPA is therefore approving revised PRRCAP Rules 102, 111, 115, 116 and Appendix A into the SIP. In addition, EPA is approving revised Rule 609 of the PRRCAP, effective February 18, 2011, as part of the federally approved Puerto Rico Title V operating permits program.

#### **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);



- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory

Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register].

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects:

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 31, 2012\_\_\_\_\_

Regional Administrator  
Region 2

Judith A. Enck,

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52 - [AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**AUTHORITY:** 42 U.S.C. 7401-7671q.

**Subpart BBB - Puerto Rico**

2. Section 52.2723 is amended by revising the “EPA approval date” entries for Rules 102, 111, 115, 116 and Appendix A.

§52.2723 EPA - approved Puerto Rico regulations.

**Regulation for the Control of Atmospheric Pollution**

<b>Puerto Rico regulation</b>	<b>Commonwealth effective date</b>	<b>EPA approval date</b>	<b>Comments</b>
* * * * * Rule 102--- Definitions  * * * * *	2/18/11	[Insert date of publication in the Federal Register], [Insert FR page citation]	Puerto Rico’s Environmental Public Policy Act Law No. 9 of June 18, 1970 was replaced with Law 416 of September 22, 2004.
* * * * * Rule 111 ---Applications, Public Hearings and Public Notice  * * * * *	2/18/11	[Insert date of publication in the Federal Register], [Insert FR page citation]	Puerto Rico’s Environmental Public Policy Act Law No. 9 of June 18, 1970 was replaced with Law 416 of September 22, 2004.
* * * * * Rule 115--- Penalties	2/18/11	[Insert date of publication in the Federal Register], [Insert FR page citation]	Puerto Rico’s Environmental Public Policy Act Law No. 9 of June 18, 1970 was replaced with Law 416 of September 22, 2004.
Rule 116--- Public Nuisance	2/18/11	[Insert date of publication in the Federal	Puerto Rico’s Environmental Public Policy Act Law No. 9 of June 18, 1970 was replaced with

<p>* * * * *</p> <p>Appendix A, Hazardous Air Pollutants – Section 112(b) of the Clean Air Act</p>	<p>2/18/11</p>	<p>Register], [Insert FR page citation]</p> <p>[Insert date of publication in the Federal Register], [Insert FR page citation]</p>	<p>Law 416 of September 22, 2004.</p>
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[FR Doc. 2012-19961 Filed 08/28/2012 at 8:45 am; Publication  
Date: 08/29/2012]